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**Dover Hospitality Services, Inc., a/k/a Dover Caterers, Inc., a/k/a Dover College Services, Inc. and Local 1102 of the Retail, Wholesale & Department Store Union, United Food & Commercial Workers Union.** Case 29–CA–030591

September 30, 2014

**DECISION AND ORDER**

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA  
AND HIROZAWA

On July 12, 2012, the Board issued a Decision and Order in this proceeding, which is reported at 358 NLRB No. 84. Thereafter, the General Counsel filed an application for enforcement in the United States Court of Appeals for the Second Circuit.

At the time of the Decision and Order, the composition of the Board included two persons whose appointments to the Board had been challenged as constitutionally infirm. On June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid. Thereafter, the court of appeals vacated the Board's Decision and Order and remanded this case for further proceedings consistent with the Supreme Court's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

In view of the decision of the Supreme Court in *NLRB v. Noel Canning*, supra, we have considered de novo the judge's decision and the record in light of the exceptions and briefs. We have also considered the now-vacated Decision and Order, and we agree with the rationale set forth therein. Accordingly, we adopt the judge's rulings, findings, and conclusions and adopt the judge's recommended Order<sup>1</sup> to the extent and for the reasons stated in

<sup>1</sup> We shall substitute a new notice in accordance with our decision in *Durham School Services*, 360 NLRB No. 85 (2014).

the Decision and Order reported at 358 NLRB No. 84, which is incorporated herein by reference.

Dated, Washington, D.C. September 30, 2014

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Mark Gaston Pearce, Chairman

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Kent Y. Hirozawa, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER MISCIMARRA, concurring.

I concur in this case and agree, for the reasons stated by the judge, that the Respondent violated Section 8(a)(5) and (1) of the Act when it failed and refused to furnish information the Union requested on January 5, 2011, and I join in adopting the judge's recommended Order.<sup>1</sup> Although I agree with the judge's decision, I would make two observations not addressed by the judge. First, I do not pass or rely on the judge's statements that the obligation to disclose requested information is unaffected by potential "other uses" or other "pending litigation" involving benefit funds.<sup>2</sup> Second, to the extent the requested documents encompassed financial information concerning locations other than the two facilities at issue in this case, the requests in this respect may have been overbroad.<sup>3</sup> These points may very well be relevant if similar issues arise in other cases, but the Employer's failure to respond at all to the Union's January 5, 2011 requests means these potential defenses were not timely raised.

<sup>1</sup> I also agree that the Respondent's exceptions and brief substantially comply with the requirements of Sec. 102.46 of the Board's Rules and Regulations, that there is no basis upon which to reverse the judge's credibility resolutions under *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951), and that the Union did not waive its right to the requested information by waiting 8 months after the Respondent claimed inability to pay to make its request.

<sup>2</sup> For example, it is well established that requests for financial information, even if relevant, can implicate potential confidentiality concerns that, if timely raised, may result in an obligation for the parties to engage in bargaining regarding potential ways to accommodate such concerns. See, e.g., *Silver Bros. Co.*, 312 NLRB 1060 (1993). In the instant case, however, the Respondent did not respond to the Union's request for financial information, and therefore it did not raise any potential confidentiality defense in a timely manner.

<sup>3</sup> Here as well, the Respondent's failure to respond in any manner to the Union's requests means such a defense was not timely raised, which would prevent it from being considered at this juncture.

For these reasons, I concur in this matter.  
Dated, Washington, D.C. September 30, 2014

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Philip A. Miscimarra, Member

NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain in good faith with Local 1102 of the Retail Wholesale & Department Store Union, United Food & Commercial Workers Union by declining to furnish information relevant and necessary to the Union's performance of its duties as the exclusive representative of our employees in the following appropriate unit:

All regularly employed kitchen, dining room, bar, cafeteria, kiosk and cart employees employed by us at the Suffolk County Community College Selden Campus and the grill employees employed by us at the Suffolk County Community College Brentwood Campus, excluding, however, all cooks, custodians, university students, causal employees as defined in Article 2, office and clerical employees, supervisors and guards as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL provide the Union with the information requested by its letter of January 5, 2011.

DOVER HOSPITALITY SERVICES, INC. A/K/A  
DOVER CATERERS, INC., A/K/A DOVER COLLEGE  
SERVICES, INC.

The Board's decision can be found at [www.nlr.gov/case/29-CA-030591](http://www.nlr.gov/case/29-CA-030591) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

